

not prevent a non-resident plaintiff, against whom an order for security for costs has been taken out on praecipe, from moving to set aside such order upon any ground otherwise open to him: it merely provides a means whereby such a plaintiff, wishing to move for summary judgment, may, by paying \$50 into court, proceed with such motion without fully complying with the praecipe order.

Walters v. Duggan, 17 P.R. 359, followed.

Collison, for plaintiff. *Burbridge*, for defendant.

Mathers, C.J.]

[March 22.

HAINES v. CANADA RAILWAY ACCIDENT CO.

Accident insurance—Proviso against liability if deceased came to his death while under the influence of intoxicating liquor—Condition that notice of death must be given within ten days thereafter.

When last seen alive, 21st November, 1908, the deceased was under the influence of intoxicating liquors and the probabilities were that he met his death by drowning on the same day, as nothing was seen or heard of him until his body was found in the river in the following spring, greatly decomposed, but without any mark of violence.

The policy sued on contained a provision upon which the defendants relied, namely, that, if deceased met his death while under the influence of intoxicating liquors, the claimant should only be entitled to one tenth of the amount of the policy.

Held, that the onus was upon the defendants, and that, as there was no evidence to shew exactly when the death took place, they had failed to make good that defence.

Canadian v. American Accident Co., 25 S.W.R. 6, followed.

Held, however, that defendants were entitled to succeed on their objection that notice of the death had not been given to them by or on behalf of the insured within ten days after the death, as required by the policy, although no one knew of the death until months afterwards.

Cartie v. Lancashire, etc., Ins. Co., 1 T.L.R. 495, followed.

Kentzler v. American Mutual, 60 N.W.R. 1002, distinguished.
Trueman, for plaintiff. *Fullerton*, for defendants.